U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVERETT L. JOHNSTON and DEPARTMENT OF VETERANS AFFAIRS, DENVER MEDICAL CENTER, Denver, Colo.

Docket No. 95-2689; Submitted on the Record;
Issued February 23, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained cervical strain, lumbosacral strain and a right wrist ganglion on September 22, 1994 as he caught himself from falling off a ladder while in the performance of duty.

On September 22, 1994 appellant, then a 39-year-old lead plumber pipefitter, filed a claim alleging that he slipped off a ladder and grabbed a metal rail to keep himself from falling that date, lacerating his right middle and ring fingers. Thereafter, he regained his footing and did not fall to the floor.

In support of his claim, appellant submitted September 22, 1994 employing establishment emergency treatment records which noted that his right finger lacerations were irrigated and sutured, that the sutures were removed on October 2, 1994 and that the wounds were healing well. An employing establishment medical treatment note dated October 4, 1994 indicated that appellant continued to have right hand pain and had a probable strained wrist from the initial injury with his body weight pulling on his right wrist. A soft one and one-half to two centimeter raised area was noted over the wrist and a ganglion was diagnosed. No opinion on the cause of the ganglion was provided. An October 6, 1994 progress and work status report noted appellant's diagnoses as "brachial plexus stretch, dorsal wrist ganglion" and indicated by a circled "yes" that the examining physician felt the diagnoses were work related. Similar reports dated October 27, November 10 and December 12, 1994 indicated likewise. A November 10, 1994 narrative note discussed the presence of appellant's above diagnoses but did not address causal relation. A December 12, 1994 narrative note did likewise.

In a January 20, 1995 report, Dr. Bennett I. Machanic, a Board-certified neurologist, reported that when appellant caught himself on the metal railing with his right hand, he experienced a sudden jerking sensation of the entire right arm and shoulder, after which his entire arm felt achy. He noted that thereafter appellant developed tingling and numbness, which Dr. Frank A. Scott, an orthopedic surgeon, felt was a right brachial plexus stretch injury.

Dr. Scott was also noted as diagnosing a dorsal wrist ganglion. Dr. Machanic noted that he followed appellant for continuing right arm aching and pain over the dorsum of the right wrist, but noted that appellant had no complaint of problems in the neck. Thereafter, Dr. Machanic noted that appellant began to notice some stiffness over the neck, the lower back and the right buttock. However, no discussion of the causation of these symptoms was included. Upon physical examination, Dr. Machanic noted normal movement in the thoracic and lumbosacral spines and full range of shoulder motion. He indicated that appellant had a right wrist dorsal ganglion cyst which tripled in size and bulged outward during exertional activities and which was very tender and caused tingling fingers when compressed. Dr. Machanic opined that appellant did not have thoracic outlet syndrome or a peripheral nerve compression syndrome and he recommended treatment of the ganglion cyst.

A January 26, 1995 medical progress note indicated that appellant fell off a couch three days ago and had been complaining of right-sided pain, numbness and tingling for three days. It noted pain in his right arm, leg, face and indicated that he had positive right low back pain since with radiation down his right leg. Examination revealed right lumbar paraspinal tenderness and a positive right straight leg raising test. The note also mentioned as history that on September 22, 1994 appellant caught his weight with his right hand, had sutures and pain in his right wrist and had a ganglion evidence with right radicular stretch.

A January 29, 1995 emergency room treatment record indicated that he was seen that date for paresthesia of his left arm persisting for four hours prior to arrival. The examining physician noted that appellant had had a history of right upper extremity paresthesia for four months and that three days earlier he experienced paresthesia of the right lower extremity and low back pain. The physician noted that appellant had no other complaints and had no injury to his neck or complaints of neck pain.

On February 8, 1995 the Office accepted that appellant sustained right finger lacerations and a right brachial plexus injury on September 22, 1994.

A February 10, 1995 report indicated the inaccurate history that appellant fell off a ladder and onto his right side and that since that time he had experienced numbness and tingling in his face, shoulders, arms and right lower leg. The treating physician incorrectly stated that appellant's symptoms began immediately after the fall at work on September 22, 1994. The physician noted that appellant's intermittent numbness and tingling could be consistent with multiple sclerosis and that normal electromyogram (EMG) testing results during an episode argued against brachial plexus injury or thoracic outlet syndrome.

A March 16, 1995 referral for cervical spine magnetic resonance imaging scan noted the date of injury as September 22, 1994 and incorrectly noted the diagnosis of injury as cervical strain. A narrative report from March 16, 1995 also noted an incorrect history that on September 22, 1994 appellant fell off a ladder and onto his right side and subsequently had multiple complaints of numbness and tingling in his face, shoulders, arms and right lower leg. The examining physician, Dr. Caroline Gellrick, an occupational medicine specialist, incorrectly noted that appellant's symptoms began after onset of the fall. She then subsequently reported an accurate history of injury and symptomatology, but did not discuss the internal conflict created with the earlier detailed incorrect version of the facts. The report stated that appellant twisted his

neck and right brachial plexus when catching himself, facts not supported by the record, but then stated that the December 29, 1994 EMG testing showed no pathology of the brachial plexus. Dr. Gellrick noted right-sided cervical tenderness and decreased range of motion, but noted that appellant had no evidence of thoracic or lumbar tenderness. She noted that appellant stated that he had been working heavily in the last week and felt like he might have strained his lower back on the job within the last week. Dr. Gellrick opined that appellant certainly sustained a right brachial plexus injury and cervical strain from a torsion maneuver on the ladder, but opined that his other symptoms were not work related. She then speculated that the dorsal ganglionic cyst, which appellant claimed appeared about a week after the injury, could be related to the 1994 injury.

A March 22, 1995 report stated that appellant was developing a rapid fibromyalgia and was distressed, depressed and withdrawn. Causal relation was not discussed.

However, a March 23, 1995 physical therapy report included as history that appellant stated that his symptoms came on slowly over time and that his initial injury did not cause problems other than a cut to his hand.

An April 24, 1995 medical summary from Dr. Gellrick reported a diagnosis of cervical strain with right brachial plexus strain with symptoms of thoracic outlet syndrome which seem to be dissipating. A May 3, 1995 medical summary characterized appellant's examination as a "work comp[ensation] follow-up … of right brachial plexus strain with cervical strain with ganglionic cyst" and contained a diagnosis of multiple body trauma, dorsal cyst on the right wrist, right brachial plexus strain, cervical strain and probably right-sided lumbar strain. Neither report contained an explanation of how the additional diagnoses were related to the September 22, 1994 incident.

In a May 24, 1995 report, Dr. Gellrick noted that she did not examine appellant at the time of his September 22, 1994 employment injury, but she presented a history of injury based on a review of previous medical records, including those containing inaccurate histories of injury. Dr. Gellrick stated that appellant sustained a torsion-type injury, that the ladder started to give way and that appellant grabbed a rail overhead and twisted 270 degrees, caught the ladder and regained his balance. The Board notes that these assumptions are not supported by the factual record. Dr. Gellrick further opined that this definitely produced cervical strain, right brachial plexus strain and right upper extremity trauma. She did not, however, address the medical reports submitted for six months following the injury which included examinations of appellant's neck and cervical spine and which noted no objective neck trauma or pathology evident and which documented the absence of subjective neck symptomatology. Dr. Gellrick further stated that appellant had "worked for years as a plumber and has developed a cystic formation on the dorsal aspect of the right wrist about a week after this injury occurred from repetitive use of the right hand, but it did not flare up until this injury occurred." She further reported appellant's version of his treatment history which was not supported by the actual treatment reports included in the case record and speculated that it was certainly conceivable that appellant might have a minor right-sided lumbar strain from the "force of impact of his strain." Dr. Gellrick speculated that with appellant's brachial plexus strain and the twisting rotation movement while holding onto an overhead rail with his head twisted to one side, "he certainly

could have sustained cervical strain." She stated that cervical strain may not show up for several weeks and that it was conceivable that it was missed on initial encounters, but then she admitted that it was unclear when the cervical pain and strain showed up and hypothesized that it was conceivable appellant could have had cervical strain. Dr. Gellrick demonstrated no awareness that multiple neck and cervical spine examinations five to six months after the injury revealed no neck or cervical pathology or complaints and she provided no reasonable explanation for this lengthy delay in onset. Further, she predicated her opinion on the assumption that appellant sustained an extreme twisting injury, which was not supported by the factual record. Dr. Gellrick speculated that appellant's brachial plexus strain had not resolved due to probable superimposed thoracic outlet syndrome and she recommended EMG testing, apparently forgetting that in her March 16, 1995 report she had noted that the December 29, 1994 EMG testing showed no pathology of the brachial plexus.

Thereafter appellant submitted numerous work-capacity evaluation forms signed by Dr. Gellrick and containing diagnoses of additional conditions which she related all to appellant's September 22, 1994 injury. These additional diagnoses included cervical strain, lumbosacral strain and right leg paresthesia, which she claimed was injury related "due to being suspended during injury." However, no pathophysiologic explanation of the process supporting these supposedly related diagnoses, or why they did not appear for six months following the injury, was provided.

In a May 31, 1995 field nurse initial evaluation, the nurse detailed appellant's history of injury, noting that he reinjured himself on October 4, 1994 while using a rotor hammer to drill holes, which caused right hand swelling up into the shoulder area. The nurse noted that appellant was seen at the employing establishment emergency room, that a ganglion cyst was diagnosed and that appellant claimed he was told to hit the cyst with a bible in order to disperse it.

In a June 12, 1995 report, Dr. Gellrick provided a factual history not supported by the record and in conflict with some of her earlier reports and diagnosed myofascial fibromyalgia and possible thoracic outlet syndrome.

By decision dated June 27, 1995, the Office rejected appellant's claim for additional injuries finding that the evidence of file failed to demonstrate that appellant's right hand ganglion cyst, cervical strain and lumbosacral strain were causally related to his September 22, 1994 accepted employment injury. The Office noted the extreme latency of onset of these conditions and the lack of medical rationale explaining the causal relationship.

Thereafter appellant, through his representative, submitted a substantial amount of additional medical evidence, which the Board is now precluded from considering.[1]

On July 31, 1995 appellant, through his representative, requested an oral hearing on the denial of his claim. By procedural decision not on the case merits dated August 26, 1995, the Office denied appellant's request for an oral hearing finding that his request was not postmarked

[1] *See* 20 C.F.R. § 501.2(c).

within 30 days of the most recent Office final decision, such that he was not, as a matter of right, entitled to a hearing and finding that, considering the issue involved, appellant could request reconsideration from the Office and submit any additional evidence with such a request.

The Board finds that appellant has failed to establish that he sustained cervical strain, lumbosacral strain and a right wrist ganglion on September 22, 1994 as alleged.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury or illness claimed and factors of his federal employment.[2] Causal relationship is a medical issue that can be established only by medical evidence.[3] The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.[4] The Board further notes that mere conclusions, such as the ones under consideration in this case, without supporting medical rationale are of little probative value.[5]

In the instant case, the Office accepted that on September 22, 1994 appellant sustained right hand finger lacerations and a right brachial plexus strain injury. He was timely treated and his sutures were removed on October 2, 1994 with his wounds noted as healing well. Thereafter he returned to work and on October 4, 1994 "reinjured" himself while using a rotor hammer to drill holes. Symptoms were noted as including right hand pain and probable right wrist strain and a right ganglionic cyst was observed at that time. The Board notes that any conditions resulting from this new October 4, 1994 injury would have to be considered under a new and separate claim.

Subsequent medical narrative and form reports listed "brachial plexus stretch, dorsal wrist ganglion" as diagnoses, but failed to provide any explanation as to how the ganglion cyst occurred or was related to the September 22, 1994 injury as opposed to the October 4, 1994 injury, at which time the cyst was noted. In their reports in the months following these injuries, neither Drs. Scott nor Machanic addressed causal relation with respect to the development of the ganglion cyst. Therefore, their reports do not support appellant's claim of causal relation. On March 16, 1995 Dr. Gellrick, relying on an inaccurate history of injury, speculated without any rationale that the dorsal ganglionic cyst could be related to the 1994 injury. As this report is based on an inaccurate history it is of diminished probative value. As this report is speculative, it is of further diminished probative value. As it is supported by no medical rationale, its probative value is even less and as Dr. Gellrick does not differentiate between the effects of the September 1994 injury and the October 1994 injury, it does not support appellant's specific

[2] *Steven R. Piper*, 39 ECAB 312 (1987); s*ee* 20 C.F.R. § 10.110(a).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[4] *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

[5] *See Richard Giordano*, 36 ECAB 134 (1984).

claim. Thereafter, however, Dr. Gellrick provided an opinion conflicting with her earlier reports and stating that appellant's cystic formation on the dorsal aspect of the right wrist occurred from repetitive use of the right hand in his work for years as a plumber, rather than from the September 22, 1994 injury. As this opinion is in conflict with her other reports it is seriously diminished in probative value and as Dr. Gellrick did not address why the ganglion would "flare up" coincident with the October 4, 1994 injury, but be exacerbated by the September 22, 1994 injury 12 days earlier as opposed to being exacerbated by the October 4, 1994 injury when it was observed and diagnosed, her report is incomplete and unrationalized and is of greatly diminished probative value. As no further probative medical evidence addressing the causal relationship of appellant's ganglionic cyst was submitted prior to the Office's June 27, 1995 decision, appellant failed to establish his claim.

Although appellant claims that he sustained cervical strain causally related to the September 22, 1994 injury, the medical evidence of record supports that appellant had no objective neck or cervical pathology, or subjective neck symptomatology for four to five months following the September 22, 1994 injury. Multiple reports during that five-month period specifically noted the absence of any such pathology or symptomatology, and a January 29, 1995 report indicated that appellant had no injury to his neck or complaints of neck pain. However, a January 26, 1995 medical report indicated that appellant had fallen off a couch three days earlier and was complaining of right-sided pain in his face, arm and leg. Any conditions resulting from this third injury would not be compensable under the Act as they would not be employment related. Appellant was first referred for neck and cervical evaluation and imaging on March 16, 1995, so that the logical inference is that his "cervical strain" injury must have occurred at some point after January 29, 1995 when he was totally asymptomatic and March 16, 1995 when he was first diagnosed. However, Dr. Gellrick provided in her March 16, 1995 report an inaccurate and inconsistent history of injury, stating that appellant fell off the ladder and onto his right side and then stating that he twisted his neck while catching himself, without discussing how appellant could fall onto his right side but catch himself from falling at the same time. This glaring inconsistency diminishes the probative value of her report. Nevertheless, she also declared that appellant underwent a torsion maneuver on the ladder, a claim not supported by the other factual evidence of record, which she alleged caused his cervical strain. As this opinion is not supported by the factual evidence of record, does not explain the nearly six-month delay in the appearance of symptoms and the diagnosing the cervical strain and does not provide rationale as to why it was the September 22, 1994 injury, as opposed to the much more recent January 23, 1995 fall off the couch, that caused the cervical condition, it is of greatly diminished probative value and is insufficient to support appellant's claim.

In subsequent reports, Dr. Gellrick continued to restate that appellant had cervical strain that was a "work comp[ensation]" injury but she also continued to base these reports on an inaccurate history of injury, failed to address the six-month gap between the September 22, 1994 injury and her cervical strain diagnosis and failed to explain why the January 23, 1995 fall with right-sided trauma was not implicated in the development of the cervical strain. Consequently, these subsequent reports are also of greatly diminished probative value and are insufficient to establish appellant's claim. Later, Dr. Gellrick admitted that it was unclear to her when the cervical symptomatology showed up and then speculated that appellant certainly could have sustained cervical strain based upon her understanding of the facts of injury. This less

convincing opinion is of diminished probative value because it is facially speculative and because Dr. Gellrick predicates it upon her assumption that appellant sustained a twisting rotation movement with his head twisted to one side, which is not supported by the record. No further rationalized, probative and convincing medical evidence based upon an accurate factual and medical history was submitted to support appellant's cervical strain claim, such that he has failed to establish causal relation.

Appellant did not complain of low back or lumbosacral pain until after his January 23, 1995 fall off the couch while at home. Dr. Machanic noted in his January 20, 1995 report that appellant had begun to notice some stiffness in his neck, lower back and right buttock, but noted that appellant had normal lumbosacral spinal movement and no pain was reported or causation discussed until January 26, 1995 when he was examined for positive right low back pain since the couch fall, with radiation down his right leg. A February 10, 1995 report included the inaccurate history that appellant fell off a ladder and onto his right side and since that time had symptoms. This report has no probative value as it is based on an inaccurate history.

In her March 16, 1995 report, Dr. Gellrick noted that appellant had no evidence of thoracic or lumbar tenderness, but also noted that appellant stated that he had been working heavily in the last week and felt like he might have strained his lower back on the job within the last week. In a May 24, 1995 report, however, Dr. Gellrick changed her opinion and, ignoring her earlier recordation of appellant's low back complaints following heavy work during the second week of March, she speculated that it was certainly conceivable that appellant might have a minor right-sided lumbar strain from the force of impact of his strain. As this report is speculative, it is of diminished probative value, as it is based on an unsupported factual and medical history, it is of further diminished probative value and as it is in conflict with her own earlier documented evidence of heavy work-related strain complaints, it is inconsistent with her prior observations, wholly unrationalized and lacking in any probative value. Dr. Gellrick's subsequent reports also suffer from these deficiencies and are hence equally lacking in any probative value.

Appellant alleged that he sustained cervical strain, lumbosacral strain and a right wrist ganglion from his September 22, 1994 employment injury but he has failed to submit any contemporaneous probative, rationalized medical evidence supporting his claims. In fact, a March 23, 1995 physical therapy report, included as factual history that appellant stated that his symptoms came on slowly over time and that his initial injury did not cause problems other than a cut to his hand. In light of the medical evidence of record and appellant's own admission against self-interest on March 23, 1995, he has failed to establish his additional injuries claim.

Further, as appellant did not request an oral hearing postmarked within 30 days following the June 27, 1995 Office decision, he is not by right entitled to such a hearing and as the Office found that the issue in question could be adequately addressed by submission of additional medical evidence to the Office with a request for reconsideration, the Office did not abuse its discretion by refusing to grant him a hearing.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated August 26 and June 27, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 23, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member